

ALEX C. BARR,)
)
Plaintiff,)
)
v.) CV417-203
)
BOARD OF REGENTS OF THE)
UNIVERSITY SYSTEM OF GEORGIA,))
)
Defendant.)

In response to defendant's motion to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim, plaintiff asks to be permitted to file an Amended Complaint curing any deficiencies. Doc. 8. Defendant opposes, arguing the Court should not permit amendment as it would be futile. Doc. 9 (arguing plaintiff's claims are all barred as untimely).

Under Federal Rule of Civil Procedure 15(a), a party may amend his complaint once as a matter of right within 21 days after a motion is served under Rule 12(b), (e), or (f). Even when a party may not amend as a matter of right, she may amend with the opposing party's written consent, or the court's leave. Fed. R. Civ. P. 15(b). “The court should

freely give leave when justice so requires.” *Id.* While leave to amend is generally freely given, it is by no means guaranteed. “In making this determination, a court should consider whether there has been undue delay in filing, bad faith or dilatory motives, prejudice to the opposing parties, and the futility of the amendment.” *Cooks v. United States*, 2015 WL 7069665 at *1 (S.D. Ga. Nov. 13, 2015) (quoting *Saewitz v. Lexington Ins. Co.*, 133 F. App’x 695, 699 (11th Cir. 2005)).

Here, we are outside that 21-day grace period. And on the face of his Complaint, it appears plaintiff may indeed be time-barred by 42 U.S.C. § 1981 (providing for a two-year statute of limitations). But plaintiff offers an explanation of how he will rescue his Complaint: by clarifying that his claims are brought under the amended version of that statute, and thus subject to a four-year statute of limitations. Doc. 8 at 2-3. While it may yet be dismissed, this amendment is not obviously futile.

Barr’s motion to amend is **GRANTED**. Defendants’ motion to dismiss (doc. 4) is further deemed **MOOT**. Plaintiff may file his Amended Complaint within 21 days of service of this Order.

SO ORDERED, this 6th day of March, 2018.



UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA